3649

No. 244

Gr. mo.

Brief of Docket & Cert. for D.C.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 19, 1899

No. 244.

Supreme Court U. S.
FILED
OCT 19 1899
JAMES H. McKENNEY,
Clerk.

THE YAZOO AND MISSISSIPPI VALLEY R. R. CO. ET AL., PLAINTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT.

ANSWER TO MEMORANDUM OF PLAINTIFFS IN ERROR UPON DEFENDANT IN ERROR'S MOTION TO ADVANCE.

R. C. RECKETT,
FRANK A. CRITZ,
Counsel for Defendant in Error.

(17,341.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-17-'99

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 244.

THE YAZOO AND MISSISSIPPI VALLEY R. R. CO. ET AL., PLAINTIFFS IN ERROR,

vs

WIRT ADAMS, STATE REVENUE AGENT, USE, &C., DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

ANSWER TO MEMORANDUM OF PLAINTIFFS IN ERROR UPON DEFENDANT IN ERROR'S MOTION TO ADVANCE.

We suggested no time in asking the advance of this case on the docket, for the reason that we were utterly misled about the plaintiffs in error making any resistance at all to the motion.

Mr. Edward Mayes has all the time expressed to us a willingness to advance the case to the earliest practicable

moment, and that the railroads would not resist the motion, and he has been the leading attorney for the railroads since the inception of this litigation in 1893, and Judge Fentress has never been present nor represented the railroads in any particular whatever in any of the courts in the State. The supreme court of Mississippi once postponed the cause in order that he might be present and make an argument, but he never came, nor did he file any brief.

It will be noticed that Mr. Edward Mayes' name is not signed to this memorandum of opposite counsel, nor even that of Judge Jas. Fentress, but only the name of Mr. Wm. D. Guthrie, who least of all has any reason to resist the advancement to the time we herein suggest.

Now we will refer to certain documents to show this. By reference to the brief of Mr. Guthrie, which we do not know as a fact, but understand was prepared by him, he states as one of the grounds of his opposition to dismiss or affirm that it was a very important case and that "the argument on the merits can be advanced for hearing and an ample supersedeas bond had been furnished to protect the State." See in first half of page 2 of their brief, in opposition to our motion to dismiss or affirm, No. 756, October term, 1898, and No. 244, of this term.

Further, Mr. Mayes did not expect the motion to be resisted, and for a reason showing why he would not sign this memorandum we are forced to file the original letter received from him by R. C. Beckett, one of the attorneys in this case, which shows the same agreement and understanding at other times, which is as follows:

"ILLINOIS CENTRAL RAILROAD COMPANY,
"OFFICE OF DISTRICT ATTORNEY,
"JACKSON, MISS., *June* 10, 1899.

"Hon. R. C. BECKETT,
"*West Point, Miss.*

"MY DEAR SIR: Yours of the 8th inst. has been received. So far as the exhibit of the record in the Federal courts,

which is referred to in the answer and made a part of the same, is concerned, it has been, and is my intention to file the same before or by the time when the cause is to be called before the chancellor. I did not file the same, at the same time with the answer, for the reason that I had to have some papers copied in order to constitute a part of that exhibit. As a mere matter of pleading, I do not agree with you, that the proceedings in the appellate or any other court, are necessary part of a plea in abatement. I think it is sufficient that a properly certified copy of the record is produced to sustain the plea in abatement as evidence, if any issue is taken on the same. In other words: My idea is that the record is evidence and not pleading, and I do not think that the case in 13 Wallace, holds that it is pleading. But the difference between us on this point is not material, for the reason that as you see by my answer, I propose to make the whole record a part of the plea by rendering it, as an exhibit thereto.

"There will be no difficulty about this matter, as to putting it in shape, and you need not take any trouble about it. I will refer to the mandate in the Federal court here, and get the exact date of the decision on the application for a rehearing, and I will write down to McKee, and make him send me a copy of the orders in the court of appeals, all of which I will work into the exhibit.

"I suppose it would be better to dispose of the two cases in the circuit court down here, separately.

"Now in regard to the request you make about producing a statement of the net and gross profits of the railroad for 1898; my own idea about that is, that your request is premature, and I must respectfully decline to call upon the railroad company to take the trouble to make out elaborate statements, involving troublesome researches into facts, until the issues in the case, where those statements will be needed, have been made up. It is not yet apparent that the statement which you have called on me to furnish, will be at all material in the case. I do not desire to delay you in getting your judgments in this matter, because, as I said to you on several occasions before, I am willing to expedite the matter, and have the judgments rendered, and let the whole thing go to the Supreme Court and be disposed of this fall. At the same time, I am not disposed to call on the company, as I said before, to make elaborate statements, in respect to

matters that are not in issue, and so far as I see, will not be in issue between us.

"I do not see how or why we shall ever go to the question of net profits in these matters, holding, as the supreme court of this State has held, in your favor.

"In respect to the time for taking up the cases in the circuit court, suppose we fix Thursday of the first week? I mention that day for the reason that I have an important case in the chancery court at Clarksdale, which meets on the 19th, and it will be necessary for me to attend that court. So that if we select Thursday, I will have full opportunity to go and get back, in time to meet you here, and I am like yourself, I want to get rid of all these cases at as early a date as practicable, for the personal reason that I want to knock off work, and get a little rest. I have not been at all well for the last three or four weeks.

"Yours very truly, EDWARD MAYES."

(Said R. C. Beckett says it is a fact that he received said letter in due course of mail, and we all say that we are perfectly familiar with the signature of Mr. Edward Mayes, and that the signature to said letter is his, and the original is filed in this case for inspection by the court.)

And we had no right or reason before serving notice of our motion to advance the case that there would be opposition, and only a few days ago did we get notice from Mr. Guthrie that he intended to resist it, except to January 6, and we were not notified of the points on which he relied until just a few moments before the time for the court to convene, and then only through the kindness of the clerk, who gave us Mr. Guthrie's memorandum, which had just been filed. Hence we had no time to answer, but simply time to glance over it.

Mr. Guthrie's memorandum, it will be noticed, is not sworn to, and leaves him ground to overdo himself instead of us. But our motion is founded on a petition sworn to, and not a single fact stated in the petition is overdrawn or untrue, including the capitol or State building and fi-

nances. The fact is, that for the last two years the State of Mississippi has had to make an additional levy for taxes of one-half mill on all taxable property to meet the pressing, ordinary expenses of the State government.

In regard to the second paragraph of the answer about Mr. Mayes' child being sick, his little boy did become sick in July last in Memphis with what he said, and it was no doubt true, typhoid fever. But he returned home in August, and after conducting business there for some time went, as we understand, to New York to consult with Mr. Guthrie, and returned home before any yellow fever had been announced at Jackson. So we contend and state on our information and belief that Mr. Edward Mayes has been in the actual conduct of the suit from its beginning, and that he has recently left New York, having remained there as long as Mr. Guthrie wished, and, besides, at no time have the mails ever been quarantined between New York and Jackson, Mississippi, or Memphis, Tennessee, and at no time has it been impossible for Mr. Mayes to go to New York when he thought it was necessary or Mr. Guthrie desired a conference with him—no, not since the motion in April has he been denied this privilege. We besides state as a fact that Mr. Guthrie filed a brief in opposition to our motion to dismiss or affirm, and has had actual notice from the printed record of all the matters involved, which was over six months ago, including notice of motion. Mr. Guthrie having seen in our motion to advance that the legislature of the State meets on Monday, the 6th January, 1900, has, as a curious coincidence, asked this court to advance, or, rather, postpone, the case to about that time.

In the State of Mississippi the representatives of the people elected to the house and senate always like to get the opinions and wants of their constituents before the legislature meets. They only sit two or three months, and to then find out what kind of a state-house was needed or what amount of money they could reasonably invest, and

then get plans and specifications and contractors and the necessary bills through, would consume almost all, if not the entire session. Besides, there are two other cases, No. 318 and No. 320, to be submitted on the first Monday in November, being the 6th day. One, No. 318, being by agreement, having been noticed for October 23, and the other by notice so as to conform to this same time, November 6. These cases embrace many of the points involved in this case, and on oral argument in this case it would be of much assistance to the court in the consideration of Nos. 318 and 320.

We therefore respectfully ask that this case be advanced to Monday, the 6th day of November, or as soon thereafter as the convenience of the court will permit, preferably said 6th November, as that will give the court some time to consider and decide it before the meeting of the legislature, or at least shortly thereafter. We think this request eminently just and as fully meeting the statute and all the rules of this court on that subject.

One of the signers of this counter-statement is Judge F. A. Critz, who was admitted to practice in this court on the 16th instant, who for the past six years has been a member of the house and senate of the legislature of Mississippi, and has been for the last four years chairman of the committee on railroads, and knows the truth of the statements about the capitol or state-house and the anxiety of the legislature to get an early decision of these cases, and especially this one. He knows that said statements are not overdrawn.

Wherefore defendant in error asks that this cause be advanced and set for hearing on November 6, 1899, or as near thereto as the convenience of the court will permit.

R. C. Beckett.
Frank A. Critz.
Wirt Adams.

Subscribed and sworn to before me this 17th day of October, 1899.

[SEAL.] JAMES D. MAHER,
Notary Public, District of Columbia.

Respectfully submitted.

R. C. BECKETT,
FRANK A. CRITZ,
Counsel for Defendant in Error.